

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2007 MTWCC 31

WCC No. 2005-1256

BUDD CARDWELL

Petitioner

vs.

UNINSURED EMPLOYERS' FUND

Respondent

and

TERRY RACKLEY

Respondent/Employer.

ORDER ON COSTS

Summary: Petitioner filed an application for costs twelve days after this Court's entry of Findings of Fact, Conclusions of Law and Judgment. Respondent objected upon the grounds that Petitioner's application was untimely pursuant to ARM 24.5.342(1).

Held: ARM 24.5.303(3) states that three days shall be added to the prescribed period of time whenever service of a notice or other paper is accomplished by mail. Accordingly, Petitioner had thirteen days from this Court's entry of judgment within which to file his application for costs. Therefore, the application, which was filed twelve days after the Court's entry of Findings of Fact, Conclusions of Law and Judgment was timely.

¶ 1 On June 15, 2007, this Court issued its Findings of Fact, Conclusions of Law and Judgment, finding, *inter alia*, that Petitioner was entitled to his costs, payable by his employer, Terry Rackley (Rackley). Petitioner filed his application for costs on June 27, 2007, claiming costs in the amount of \$1,713.30.

¶ 2 Rackley objected to Petitioner's application for costs, claiming that it was untimely pursuant to ARM 24.5.342(1), which requires a party to file his application for costs within ten days after the Court's entry of judgment.

¶ 3 ARM 24.5.342(1) states:

Unless otherwise ordered by the court, within 10 days after the entry of a judgment allowing costs, a prevailing claimant shall serve on the parties against whom costs are to be allowed an application for taxation of costs. The application must be filed with the court.

¶ 4 ARM 24.5.303(3) states:

Whenever a party has the right or is required to do some act within a prescribed period of time after the service of a notice or other paper upon the party and the notice or paper is served by mail, three days shall be added to the prescribed period.

¶ 5 Reading ARM 24.5.342(1) and ARM 24.5.303(3) together, Petitioner had thirteen days from this Court's entry of judgment on June 15, 2007, within which to file his application for costs. Therefore, Petitioner's June 27, 2007, application for costs was timely.

ORDER

¶ 6 Petitioner's application for costs in the amount of \$1,713.30 is approved.

DATED in Helena, Montana, this 18th day of July, 2007.

(SEAL)

/s/ JAMES JEREMIAH SHEA
JUDGE

c: Garry D. Seaman
Brian J. Hopkins
Bryce R. Floch
Submitted: July 2, 2007